

Manager Fact Sheet: ADA Title II Equally Effective Communication

February 2012

Introduction:

This fact sheet provides executive branch managers and Americans with Disabilities Act (ADA) coordinators a summary of the *equally effective communication* requirements of Title II of the ADA.

Title II, as well as other federal and state laws, regulations, and policies require agencies to provide people with disabilities equal access to the programs, services, and activities they offer including communications.

The *Reasonable Accommodations and Equal Access* policy reinforces the state's commitment to providing equally effective communication under rules [2.21.4104](#) and [2.21.4128](#).

Is equally effective communication defined?

Yes. Equally effective communication means public entities must communicate with people with disabilities in ways that are as effective as communications with people without disabilities. In other words, the person with a disability fully understands and is understood.

This requirement applies to communications with applicants, participants, members of the public, and companions with disabilities.

Is my agency required to promote equally effective communication?

Yes. Title II requires all public entities to provide "appropriate *auxiliary aids and services* where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity."

Who is responsible to promote equally effective communication?

Agency managers are responsible. Rules [2.21.4104](#) and [2.21.4128](#) emphasize management's responsibility to fulfill this requirement. This is because agency managers are in the best position to assess the impact of an individual's request and can often grant requests with little or no effort.

What are *auxiliary aids and services*?

Auxiliary aids and services are devices or services to enable equally effective communication for people with disabilities. Common examples include, but are not limited to:

- qualified interpreters on-site or through video remote interpreting (VRI)
- qualified readers and note takers
- real-time computer-aided transcription

- electronic, Brailled, and large-print materials
- screen reader and magnification software
- exchange of written notes
- telephone handset amplifiers
- assistive listening devices or systems
- open and closed captioning

Do auxiliary aids or services vary?

Yes. Auxiliary aids or services used to promote equally effective communication will vary by the:

- a) method of communication used by the individual,
- b) nature, length, and complexity of the communication involved, and
- c) context of the communication.

Does Title II describe how to provide auxiliary aides and services?

Yes. Title II states agencies must provide auxiliary aids and services in:

- a) accessible formats,
- b) a timely manner, and
- c) such a way as to protect the privacy and independence of individuals with disabilities.

Is there a limit on the type of auxiliary aides and services agency managers must provide?

Yes. Agency managers are not required to provide individually prescribed devices such as wheelchairs, prescription eyeglasses, or hearing aids. They are also not required to provide

services of a personal nature such as assistance in eating, toileting, or dressing.

What should employees do if they receive a request for an auxiliary aid or service?

In many cases, employees can simply provide the auxiliary aid or service because it would have little or no impact on the agency's resources or operation and result in equally effective communication.

For example, if a customer with speech impairment has general questions about a program, it may be appropriate to exchange notes back and forth.

However, if the same customer has questions about applying for assistance under the program and the questions require a more in-depth response, the employee or customer may need to explore other options for equally effective communication. Again, it may be as simple as typing questions and responses back and forth on a computer or responding to the customer's questions by email. In other cases, it may be more appropriate to provide a qualified sign language interpreter.

In most cases, the individual with the disability will know what methods of communication are effective for them.

What if an employee doesn't know how to handle the situation or doesn't have the authority or expertise to make the decision on the auxiliary aid or service requested?

In these situations, the employee should promptly contact their manager or agency ADA coordinator.

What should managers do if they receive a request?

Consider the request. In many cases, agency managers can approve requests with little or no effort.

For example, a deaf customer may request an interpreter as the most effective means of communication and the manager may contract with a qualified interpreter.

Are agency managers required to provide sign language or oral interpreters?

It depends. Sign language or oral interpreters may be required when information is complex or lengthy. Factors to consider in determining whether an interpreter is required include the:

- a) context in which the communication is taking place,
- b) number of people involved, and
- c) importance of the communication.

Can managers choose auxiliary aids and services other than those requested if they would still result in equally effective communication?

It depends. Title II of the ADA states, "In determining what types of auxiliary aids and services are necessary, a public entity shall give *primary consideration* to the requests of individuals with disabilities."

"Primary consideration means the government entity must honor the choice of the individual with a disability, unless it can demonstrate 1) another equally effective means of communication exists or 2) use of the means of communication chosen would result in a

fundamental alteration in the program, service, or activity or undue financial or administrative burden."

Honoring the individual's request is usually the best course since each situation is different.

State HR recommends agency managers contact their ADA coordinator before electing another auxiliary aid or service or before denying an individual's request.

Do agency manager need to provide the requested auxiliary aide or service even if they feel it would result in a fundamental alteration to the program, service, activity, or presents an undue financial or administrative burden?

No. The Title II does not require agency managers to take any action that would result in a fundamental alteration in the nature of a program, service, or activity or in undue financial or administrative burden.

The regulations require proof that such action would result in an alteration or burden.

Who decides if the requested auxiliary aide or service would fundamentally alter to the program, service, activity, or present an undue financial or administrative burden?

The agency head or their designee must decide. They must consider all of the resources available for funding and operating the program, service, or activity before reaching a decision.

The agency head must provide a written statement of reasons for their determination if they decide the requested auxiliary aide or service alters the program, service, or activity

or presents a financial or administrative burden.

Can agency managers charge for auxiliary aids and services?

No. Agency managers may not charge individuals with disabilities for costs associated with providing equally effective communication.

Is there anything else agency managers can do to promote equally effective communication?

Yes. Agency managers can take several simple, yet important steps, to promote equally effective communication by:

- providing captioning on all videos shown during meetings and conferences;
- educating themselves and their employees;
- working with their agency ADA coordinator;
- posting the required public notices on websites and in high-traffic areas; and
- offering written materials in alternate accessible formats.

Are there resources agency managers can use to learn more about equally effective communication requirements?

Yes. Agency managers can contact their agency's ADA coordinator. They can also view any of the following resources:

- [Revised Final Title II Rule with Integrated Text – Subpart E Effective Communication](#)

- [ADA Best Practices Tool Kit for State and Local Governments – Chapter 3, Communications](#)
- [ADA Title II Technical Assistance Manual – Chapter 7, Communications](#)
- [NW ADA Center Effective Communications](#)
- [Effective Communication Techniques](#)
- [Blind & Low Vision Services](#)
- [Montana Telecommunications Access Program](#)
- [Montana Deaf and Hard of Hearing Services](#)
- [Braille the World](#)
- [Montana Internet Relay Service](#)
- [sComm Ubi Duo](#)
- [MonTech](#)
- [Lesofski Court Reporting \(Transcription Services\)](#)
- [Caption Colorado](#)

Closing:

For additional information, please contact your agency's ADA coordinator or John Pavao, State Diversity Program Coordinator, at 444-3984 or by email at jpavao@mt.gov, if you need additional information.

Alternative accessible formats of this Fact Sheet will be provided on request. Persons who need an alternative format should contact the State

*Human Resources Division, Department of
Administration, 125 N. Roberts St., PO Box
200127, Helena, MT 59620-0127. Telephone
406-444-3871. Those using TTY may call
through the Montana Relay Service at 711.*